

## **REMARKS**

### **Status of the Claims**

Claims 5, 7, and 13 are pending in the above-identified application. Claim 5 has been amended. No new matter has been added.

Applicants submit that the present Amendment reduces the number of issues under consideration and places the case in condition for allowance. Alternatively, entry of the present amendment is proper to place the claims in better form for appeal.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

### **Drawings**

Since no objection has been received, Applicants assume that the drawings are acceptable and that no further action is necessary. Confirmation thereof is respectfully requested.

### **Issues under 35 U.S.C. § 103(a)**

Claims 5, 7 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ueda et al. '103 (US 6,831,103) in view of Hamilton (J. Neurol. Neurosurg Psychiat, 1960, 23, 56). Applicants respectfully traverse. Reconsideration and withdrawal of this rejection are respectfully requested based on the following considerations.

### **Legal Standard for Determining Prima Facie Obviousness**

MPEP 2141 sets forth the guidelines in determining obviousness. First, the Examiner has to take into account the factual inquiries set forth in *Graham v. John Deere*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), which has provided the controlling framework for an obviousness analysis. The four *Graham* factors are:

- (a) determining the scope and content of the prior art;
- (b) ascertaining the differences between the prior art and the claims in issue;
- (c) resolving the level of ordinary skill in the pertinent art; and
- (d) evaluating any evidence of secondary considerations.

*Graham v. John Deere*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966).

Second, the Examiner has to provide some rationale for determining obviousness. MPEP 2143 sets forth some rationales that were established in the recent decision of *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007).

As the MPEP directs, all claim limitations must be considered in view of the cited prior art in order to establish a *prima facie* case of obviousness. See MPEP 2143.03.

Distinctions over the Cited References

On page 4 of the outstanding Office Action, the Examiner asserts:

Ueda et al. does not specify that the symptoms of mood disorder as feelings of guilt, suicide and retardation:psychomotor; however, Ueda et al. generally teaches treating symptoms of mood disorder which would include all of these symptoms. Primarily anxiogenic symptoms are often indicated in feelings of guilt and suicide. Further diminished homeostasis symptoms read on the symptoms of retardation:psychomotor. Accordingly, Ueda et al. teaches treating mood symptoms which render the present invention obvious.

Applicants respectfully traverse. As shown in Table 1 of the present specification, only 21 symptoms are statistically effectively treated by the present invention, and of these symptoms, only three are recited in the claims. The specific symptoms to be treated by the present invention are never obvious over the general teaching of Ueda et al. '103. To further clarify this point, independent claim 5 has been amended herein to recite that an individual to be treated has at least symptoms of feelings of guilt, suicide, and retardation: psychomotor rather than broadly reciting that the individual to be treated has a mood disorder.

To establish a *prima facie* case of obviousness of a claimed invention, all of the claim limitations must be disclosed by the cited references. As discussed above, Ueda et al. '103 in view of Hamilton fail to disclose all of the claim limitations of independent claim 5, and those claims dependent thereon. Accordingly, the combination of references does not render the present invention obvious.

Furthermore, the cited references or the knowledge in the art provide no reason or rationale that would allow one of ordinary skill in the art to arrive at the present invention as claimed. Therefore, a *prima facie* case of obviousness has not been established, and withdrawal

of the outstanding rejection is respectfully requested. Any contentions of the USPTO to the contrary must be reconsidered at present.

### **Conclusion**


All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Chad M. Rink, Registration No. 58,258, at the telephone number of the undersigned below to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Director is hereby authorized in this, concurrent, and future replies to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

Dated: April 14, 2011

Respectfully submitted,

By   
Craig A. McRobbie  
Registration No.: 42,874  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
8110 Gatehouse Road, Suite 100 East  
P.O. Box 747  
Falls Church, VA 22040-0747  
703-205-8000